

Before Ali Azeem Ikram, Executive Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to JS Global Capital Limited

Date of Hearing

July 15, 2020

Order-Redacted Version

Order dated September 16, 2020 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of JS Global Capital Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated April 28, 2020
2. Name of Company	JS Global Capital Limited
3. Name of Individual*	Not relevant. The proceedings were initiated against the Company i.e. JS Global Capital Limited.
4. Nature of Offence	Proceedings under Section 40A of SECP Act, 1997 for the violations of Regulation 13(1) and 13(7) of the AML and CFT Regulations, 2018.
5. Action Taken	<p>Key findings of default of Regulations were reported in the following manner:</p> <p>I have examined the submissions made in writing and during the hearing as well as issues highlighted in the show cause notice and requirements of the AML Regulations. Relevant requirements of Regulation 13(1) and Regulation 13(7) of the AML Regulations are as given below:</p> <p><i>13. Ongoing Monitoring.- (1) All business relations with customers shall be monitored on an ongoing basis to ensure that the transactions are consistent with the regulated person knowledge of the customer, its business and risk profile and where appropriate, the sources of funds.</i></p> <p><i>(7) The regulated person should monitor their relationships on a continuous basis and ensure that no such relationship exists directly or indirectly, through ultimate control of an account and where any such relationship is found, the regulated person shall take</i></p>



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immediate action as per law, including freezing the funds and assets of such proscribed entity/individual and reporting to the Commission.

The facts of the case may be summarized as under:

- (i) In terms of Regulation 13(1) of the AML Regulations, in order to ensure that the transactions with customers are consistent with the regulated person's knowledge of the customer, its business and risk profile and where appropriate, the sources of funds of customers, monitoring on an ongoing basis has been provided. For the purpose of ongoing monitoring it is essential that a regulated person understands the purpose and nature of business relationships. It is relevant to highlight that in terms of requirements (CDD), is required for the purpose of ongoing monitoring of its customers. Since, the words "ongoing monitoring" have key inferences. So, in order to further clarify the matter, I would refer to the AML/CFT Guidelines issued by the Commission, in terms of which, mechanism and underlying reasons, for various regulatory requirements have been explained. Relevant clauses of AML/CFT Guidelines are reproduced as below:

ix. When performing CDD measures in relation to customers that are legal persons or legal arrangements, RPs should identify and verify the identity of the customer, and understand the nature of its business, and its ownership and control structure.

x. The purpose of the requirements set out regarding the identification and verification of the applicant and the beneficial owner is twofold: first, to prevent the unlawful use of legal persons and arrangements, by gaining a sufficient understanding of the applicant to be able to properly assess the potential ML/TF risks associated with the business relationship; and second, to take appropriate steps to mitigate the risks. In this context, RPs should identify the customer and verify its identity. The type of information that would normally be needed to perform this function should be as specified in Annexure 1 of the Regulations.

10. On-going Monitoring of Business Relationships

i. Once the identification procedures have been completed and the business relationship is established, the RP is required to monitor the conduct of the relationship to ensure that it is consistent with the nature of business stated when the relationship/account was opened. RPs shall conduct ongoing monitoring of their business relationship with their customers. Ongoing monitoring helps RPs to keep the due diligence information up-to-date, and review and adjust the risk profiles of the customers, where necessary.



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ii. RPs shall conduct on-going due diligence which includes scrutinizing the transactions undertaken throughout the course of the business relationship with a customer.

iii. RP should develop and apply written policies and procedures for taking reasonable measures to ensure that documents, data or information collected during the "Identification" process are kept up-to-date and relevant by undertaking routine reviews of existing records.

iv. RPs shall consider updating customer CDD records as a part its periodic reviews (within the timeframes set by the RP based on the level of risk posed by the customer) or on the occurrence of a triggering event, whichever is earlier. Examples of triggering events include:

- (1) Material changes to the customer risk profile or changes to the way that the account usually operates;
- (2) Where it comes to the attention of the RP that it lacks sufficient or significant information on that particular customer;
- (3) Where a significant transaction takes place;
- (4) Where there is a significant change in customer documentation standards;
- (5) Significant changes in the business relationship.

viii. It is recognized that the most effective method of monitoring of accounts is achieved through a combination of computerized and human manual solutions. A corporate compliance culture, and properly trained, vigilant staff through their day-to-day dealing with customers, will form an effective monitoring mechanism.

ix. Whilst some RPs may wish to invest in expert computer systems specifically designed to assist the detection of fraud and ML/TF, it is recognized that this may not be a practical option for many RPs for the reasons of cost, the nature of their business, or difficulties of systems integration. In such circumstances RPs will need to ensure they have alternative systems in place for conducting on-going monitoring.

- (ii) In terms of the aforesaid clauses of the guidelines, having information of beneficial owner of corporate client was of immense importance for the purpose of CDD and for enhanced CDD for ongoing monitoring. Moreover, substantial shareholding details of corporate customer is one of the key information, in addition to sources of funds, for risk profiling, hence, updation of relevant key information in database is of important for the purpose of ongoing monitoring of business relationships, which ultimately could have effect on risk profile of corporate customers. As per available information, in case of high risk corporate client, having two directors holding one share each, whereas, beneficial



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owner of client was holding 99.99% shares, however that particular beneficial owner was not acting as director of the corporate client, and the Respondent Company, in its database did not have record of mentioned shareholder of corporate client. The Company's reliance on relevant Form A, Form 29 and availability of annual audited accounts of the corporate client were not sufficient as the material information related to beneficial owner, holding 99.99% shares of corporate client, was not updated in database of the Company, for the purpose of ongoing monitoring. Moreover, as per reply dated May 28, 2020 of the Company, Form A of the corporate client made upto October 27, 2019 was furnished. In terms of the aforesaid, the corporate client had two beneficial owners, a director of the client having 51 % shares and other beneficial owner, who was spouse of mentioned director, having 49.99% shares and she was overseas Pakistani. The above reflects a change in risk profile of the corporate client due to change in beneficial owners of the corporate client, which warrants effective ongoing monitoring of corporate clients. The Company was not updating its periodic CDD information of its corporate customer due to absence of key information of beneficial owner of one of its key customer in its database. The aforesaid reflects that at the time of inspection, ongoing monitoring of corporate customer was compromised for not having adequate material and relevant information updated in the database of the Company, which is contrary to the requirements of Regulation 13(1) of the AML Regulations.

- (iii) As regards to the observation that there did not exist any system in the Company to periodically screen shareholders of corporate clients through UNSCR/ NACTA lists as details of such shareholders of corporate clients were not being maintained. The Authorized Representative informed that the Company used to maintain the list of directors and authorized person in the database and also obtained pattern of shareholding / Form A for identification of ultimate beneficial ownership (UBO). However, as informed, the Company manually screened directors/ authorized representatives and beneficial owners and there did not exist any database or software Company to monitor relationships on a continuous basis and to ensure that no such relationship existed directly or indirectly, through ultimate control of an account. The Authorized Representative informed that a state of the art software system for the purpose of screening of directors/ authorized persons and UBOs would be implemented by December 31, 2020. In view of above, at present, there did not exist any software or database, for screening of UBOs in particular. The Company, in its reply, has also highlighted that screening of UBOs was a cumbersome task owing to its large corporate



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clientele. As stated, most effective method of monitoring of accounts is achieved through a combination of computerized and human manual solutions. The Company in its aforesaid reply has also informed that *"The company has one of the largest foreign client base and the largest retail network in Pakistan in addition to one of the largest local corporate clients portfolio"*, so having hundreds of corporate clients maintenance of UBOs information in database and periodic screening is considered essential in order to ensure compliance of the AML Regulations, however, as informed, the Company's reliance was doing its screening of shareholders of corporate client through its employees manually, which reveals that effective system to manage and mitigate risks and to monitor clients and UBOs on continuous basis does not exist. In my view, the Company should have had alternative arrangements such as MS Excel based sheets for manual screening of directors/authorized representatives and UBOs, until the conclusion of the upgradation of its systems. The aforesaid reflects that Company has deficient mechanism due to lack of proper information of UBOs in place to monitor its relationships with corporate customers and to ensure that no such relationship existed directly or indirectly through ultimate control of an account, in violation of Regulation 13(7) of the AML Regulations.

In view of the foregoing, it is concluded that the lapse was demonstrated by the Company and violations of Regulation 13(1) and Regulation 13(7) of the AML Regulations are attracted, mainly for not having updated details in its database and lack of having proper screening system of UBOs of its corporate clients. I am of the considered view that leniency on non-compliance towards Regulation 13(1) and Regulation 13(7) of the AML Regulations is not possible, since the Commission is responsible for ensuring implementation and enforcement of the applicable regulatory framework by entities that fall under its regulatory ambit.

In view of the foregoing facts, I am of the view that the Company violated the requirements of the AML Regulations as narrated in above paras. However, I have also noted that Company has either rectified or in the process of rectifying the alleged defaults to comply with applicable framework. Therefore, in terms of powers conferred under section 40A of the Act, in view of given circumstances, a penalty of Rs. 300,000/- (Rupees three hundred thousand only) is hereby imposed on the Company. The Respondent is, hereby, also directed to implement measures to manage risks of AML/CFT, by implementing its state of the art software system for screening of directors/authorized representatives and UBOs of its customers, within six months of the date of this Order, and to furnish a compliance report to Brokers Compliance Department of the Commission.



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	Penalty order dated September 16, 2020 was passed by Executive Director (Adjudication-I).
6. Penalty Imposed	A penalty of Rs. 300,000/- (Rupees three hundred thousand only) was issued to the Company.
7. Current Status of Order	An appeal has been filed against this Order.

Redacted version issued for placement on the website of the Commission.